

REMARKS

This application has been carefully reviewed in light of the Office Action dated October 3, 2006. Claims 1 to 16 are in the application, of which Claims 1, 5, 7, 11, 12 and 16 are independent. Reconsideration and further examination are respectfully requested.

Claims 1 to 21 were rejected under 35 U.S.C. § 112, second paragraph, for alleged indefiniteness over use of the alternative term “or”. In response, the claims have been amended by deleting the language deemed objectionable, such that the claims no longer recite a color “output from or input to” a color device. In addition, the amended claim language now features a recitation of “at least one of color signal data ... and color coordinate data”, thus avoiding use of the alternative term “or”. In view of these changes, withdrawal of the rejection under § 112, second paragraph, is respectfully requested.

Claims 1 to 21 were further rejected under 35 U.S.C. § 101, as allegedly being directed to non-statutory subject matter. The rejection is respectfully traversed, primarily for the reason that the rejection relied on language from MPEP that has been superceded and repudiated in newer versions thereof. Specifically, with respect to claims directed to data structures, such as independent Claim 1, current language of MPEP sets out the following test:

“In contrast, a claimed computer-readable medium encoded with a data structure defines structural and functional interrelationships between the data structure and the computer software and hardware components which permit the data structure’s functionality to be realized,

and thus is statutory.” (MPEP § 2106.01, Page 2100-18, Rev. 5, August 2006) (Emphasis added.)

Likewise, with respect to claims directed to a computer-readable storage medium which stores a computer-executable program, current guidelines of MPEP specify the following text:

“When functional descriptive materials [such as data structures and computer programs which impart functionality when employed as a computer component] is recorded on some computer-readable medium, it becomes structurally and functionally interrelated to the medium and ***will be statutory in most cases*** since use of technology permits the function of the descriptive material to be realized.” (MPEP § 2106.01, Page 2100-17, Rev. 5, August 2006) (Emphasis added.)

Amendments have been made to the claims so as to bring them into even clearer compliance with these guidelines of MPEP. The rejection of independent Claim 5 under § 101 is respectfully traversed, since the claim is clearly directed to an apparatus which is statutory *per se*. The apparatus set out in independent Claim 5 comprises a program memory for storing, *inter alia*, platform-independent code, together with a processor for compiling or interpreting the platform-independent code and for executing the compiled or interpreted result. Such an apparatus is clearly statutory since it recites at least a “machine” or a “manufacture” as permitted by § 101.

The § 101 rejection of independent Claims 7 and 11 are similarly traversed, for the reason that these claims are directed to methods that are statutory *per se*. Claim 11 is directed to a method for generating a data structure by which color behavior of a color device is modeled, and Claim 7 is directed to a method for generating a color transform

based on such a data structure. These claims are therefore statutory since they are directed to a "useful process" as permitted by § 101.


It is therefore respectfully requested to withdraw the § 101 rejections.

Turning to a formal matter, Applicant respectfully points out that an Information Disclosure Statement dated October 26, 2006 provided the Examiner with the International Search Report and Written Opinion from a corresponding PCT application. It is believed that the Examiner is familiar with these papers, since they apparently were prepared by him in the PCT application.

No other matters being raised, it is believed that the entire application is fully in condition for allowance, and such action is courteously solicited.

Applicant's undersigned attorney may be reached in our Costa Mesa, California office at (714) 540-8700. All correspondence should continue to be directed to our below-listed address.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Michael K. O'Neill", is written over a horizontal line.

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